

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Forward
Resource Adequacy Procurement Obligations.

R.19-11-009

**OPENING COMMENTS OF THE
CALIFORNIA COMMUNITY CHOICE ASSOCIATION ON TRACK 1 PROPOSALS**

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Pursuant to the *Assigned Commissioner’s Scoping Memo and Ruling* issued on January 22, 2020 (“Scoping Memo”), the California Community Choice Association¹ submits these comments on the proposals of the Energy Division Staff (“Staff”), the California Independent System Operator (“CAISO”), Southern California Edison Company and Shell Energy North America (US), L.P. (“SCE/Shell”), Morgan Stanley Capital Group Inc. (“MSCG”) and Powerex Corp. (“Powerex”) filed on February 28, 2020.

I. INTRODUCTION

CalCCA supports the Commission’s effort to ensure that energy from imports shown for resource adequacy (“RA”) compliance will be available to serve load when needed and appreciates stakeholders’ detailed proposals to achieve this objective. While each proposal will enhance reliability, their impacts will vary in several respects:

- *Supply availability.* More restrictive eligibility requirements will reduce the scope of imports available for RA compliance; unnecessary restrictiveness will unreasonably increase the cost of achieving reliability.

¹ California Community Choice Association represents the interests of 19 community choice electricity providers in California: Apple Valley Choice Energy, CleanPowerSF, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San Jose Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, and Valley Clean Energy.

- *Market power exercise.* Overly conservative firm transmission requirements will enable the exercise of market power in a highly concentrated transmission market, particularly to the California-Oregon Border (COB) and Nevada-Oregon Border (NOB), as demonstrated by MSCG.
- *Regulatory uncertainty.* More dramatic changes in past practices will increase regulatory uncertainty and, consequently, strand existing contracts and unnecessarily increase costs.
- *State authority.* Requirements that materially affect price-setting in the wholesale energy market create a greater risk of preemption by the Federal Energy Regulatory Commission (“FERC”), while requirements aligning squarely with CAISO market operation will best ensure cooperative federalism.

Taking into account these and other factors, CalCCA proposes adoption of import RA eligibility requirements that draw from the proposals advanced by the CAISO and MSCG (“Blended Proposal”).

The Blended Proposal identifies eligible categories of RA resources providing energy or capacity using the framework advanced by MSCG, subject to varying requirements for each category. CalCCA proposes that five requirements of the Blended Proposal would be common to all resource categories:

1. At the time of showing, the contract must specify a source, including pseudo-tied or dynamically scheduled resources and individual or aggregated physical resources that are in excess of the host balancing authority (“BA”) requirements.
2. The contract and attestation to the Commission must state that the supply has not been committed to other uses.
3. The contract and attestation to the Commission must confirm, consistent with existing requirements, that the product “cannot be curtailed for economic reasons, and either (a) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (b) specifies firm delivery point (i.e., is not sellers choice).”²
4. The shown import resources that clear the Day Ahead Market (“DAM”) are subject to Real Time Market (“RTM”) Must Offer Obligation (“MOO”).

² See D.04-10-035 at 21-22; Workshop Report on Resource Adequacy Issues, R.01-10-024 and R.04-04-003, June 15, 2004, at 21.

5. The resource cannot be internal to the CAISO balancing area.

The requirements would differ in certain ways as required to deter speculative supply and ensure comparable levels of assurance that the resources will be available. Capacity or energy from resources that are not pseudo-tied or dynamically scheduled must either (a) provide telemetry or other operational data to the CAISO to enable verification of resource availability or (b) be subject to a \$500/MWh DAM offer cap, which carries into the RTM MOO for cleared quantities.

In addition to these eligibility requirements, CalCCA proposes adoption of grandfathering rules to enable a transition and avoid stranding existing contracts and increasing customer costs. The new requirements should be adopted for application to the 2021 RA compliance year to avoid stranding contracts entered into for the current year. In addition, multi-year import RA contracts executed on or after the issuance of D.19-10-021 on October 17, 2019 but prior to the Track 1 final decision should be grandfathered for compliance purposes and allowed to expire under their own terms.

Collectively, these requirements will strongly deter speculative supply and ensure that energy from RA resources is available to meet California's requirements when needed. Importantly, however, these requirements will not unnecessarily reduce the supply of imports committed to support California's reliability, enable the exercise of market power by holders of transmission rights, strand existing contract value, or materially affect the operation of the wholesale energy market.

II. THE COMMISSION SHOULD BLEND THE CAISO AND MSCG PROPOSALS TO ESTABLISH IMPORT RA ELIGIBILITY REQUIREMENTS

The objective of the inquiry into import RA eligibility requirements aims squarely at reducing speculative supply. The Scoping Memo expanded on the OIR, noting the

Commission’s concerns “related to speculative supply.”³ The Staff proposal likewise provided its proposal “to reduce speculation and potential gaming in the RA import market to ensure electricity is delivered into California when it is actually needed.”⁴ CalCCA supports this goal, but there are numerous ways to achieve this objective, and the adopted approach will have other important implications. The Commission must thus tailor its import RA rules to “reduce speculative supply” while retaining supply availability, mitigating the exercise of market power, avoiding unnecessary cost increases and minimizing wholesale market impacts.

All the stakeholder proposals – all from proponents with a strong interest in ensuring reliability – would reduce speculative supply and increase grid reliability. On balance, however, reliability would be best served by a blend of the CAISO and MSCG proposals, considering the implications of a change in current rules.

A. Eligible Products

The solution should begin by defining “specific sources” using the buckets identified by MSCG:

Dynamic Product: Capacity from dynamically scheduled or pseudo tie resources⁵

Telemetry Product: Capacity from specific source (including aggregation of physical resources, or balancing authority surplus) with telemetry or other operational data provided to CAISO

Attestation Product: Capacity from specific source (including aggregation of physical resources, or balancing authority surplus) without telemetry, demonstrating availability through attestation

³ *Assigned Commissioner’s Scoping Memo and Ruling*, Jan. 22, 2020, at 3.

⁴ *Administrative Law Judge’s Ruling on Energy Division’s Track 1 Proposal* (Staff Proposal), Feb. 28, 2020, Appendix A at 2.

⁵ Note that only the Dynamic Product would be listed on the Commission’s NQC list; the other categories of resource would not.

Energy Product: Energy contract imported by LSE from specific source (including aggregation of physical resources, or balancing authority surplus)

MSCG recognizes that from the standpoint of speculative supply risk, these resource categories are not similarly situated, and thus its proposal differentiates requirements to provide comparable assurances that the supply will be available when needed. CalCCA generally supports this approach, with minor modifications.

CalCCA supports elements of the CAISO's requirements to ensure the resources are committed to the RA program. CAISO proposes that imports:

- Provide source specific information at the time of the resource adequacy showings;
- Provide an attestation or other documentation that the resource adequacy import is a specific resource, aggregation of physical resources, or capacity in excess of the host balancing authority area or supplier's existing commitments that is dedicated to CAISO balancing authority area needs

Additionally, the Commission should require eligible contracts to specify that the supply is "surplus" to the supplier's existing commitments.

B. Firm Transmission

The CAISO also proposes "the Commission and CAISO require firm transmission delivery for all resource adequacy imports be demonstrated at the time of monthly showings."⁶

To avoid negative, unintended consequences described below, CalCCA supports continued application of the Commission's approach to firm transmission. Contracts and attestations to the Commission must confirm that the product "cannot be curtailed for economic reasons, and either (a) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (b) specifies firm delivery point (i.e., is not seller's

⁶ *Id.* at 5.

choice).”⁷ In addition, as the CAISO notes, the “Commission should also consider if penalties or other enforcement actions are necessary in the case that delivery is not made via firm transmission.”⁸

Taking the more restrictive approach the CAISO proposes would unnecessarily reduce the availability of reliable imports, increase costs, and subject LSEs to market power in the firm transmission market. Requiring a supplier to commit firm transmission a month ahead, with no certainty that its supply will be needed, will discourage participation in the RA market. And if a supplier chooses to make this commitment, it will come at a steep price to customers. In addition, as MSCG demonstrated in its proposal, only four parties have firm transmission rights on both the BPA NW Network to Big Eddy and the Southern Intertie (Big Eddy to NOB) and one party controls nearly 80% of the 1,209 MW of NOB rights.⁹ This presents a significant challenge for other sellers to obtain source-to-sink firm transmission in advance of the transmission being released to the market for use by more economical resources, and therefore would reduce supplies. Mandating a month-ahead showing of firm transmission likely will provide little or no more incremental benefit than a contract provision, attestation and penalty, but will certainly reduce supply or, alternatively, increase costs unnecessarily.

C. Complementary CAISO Market and Tariff Changes

CalCCA further supports certain aspects of the CAISO’s proposed complementary market and tariff changes to support its proposal, including:

- Requiring attestations that all import resource adequacy supply included on resource adequacy supply plans is surplus, has not been committed to others, and will not be otherwise sold or relied upon to meet other areas needs after monthly showings;

⁷ See D.04-10-035 at 21-22; Workshop Report on Resource Adequacy Issues, R.01-10-024 and R.04-04-003, June 15, 2004, at 21.

⁸ CAISO Proposal at 6.

⁹ MSCG Proposal at 11.

- Requiring verification to ensure the resource specific supply remains available to the CAISO markets through the operational timeframe; and
- Clarifying that only source specific supply can qualify as resource adequacy import capacity.

Making changes to the CAISO tariff, rather than simply the Commission’s rules, ensures *all* LSEs – not just Commission-jurisdictional LSEs – rely only on resources that demonstrate a higher level of certainty of availability. CalCCA supports these changes, subject to two clarifications. First, “source specific supply” should be defined to include not only Dynamic Products by Telemetry, but also Attestation and Energy Products as defined above. Second, the CAISO should require verification of availability in the operational timeframe for only Dynamic Products (through the RTM MOO) and Telemetry Products (through Telemetry); as discussed below, Attestation and Energy Products are subject to offer caps in the DAM and, if cleared in the DAM, the RTM.

CalCCA does not, however, agree with the CAISO proposal to modify its “market participation models to extend Must Offer Obligations to the Real-Time Market for all MWs included on resource adequacy showings....”¹⁰ With other measures in place, this measure is unnecessary, likely to reduce the efficiency of the Energy Imbalance Market (“EIM”) and could increase customer costs.

The RTM MOO is unnecessary for all imports for several reasons. First, the CAISO will have visibility of the Dynamic Product and Telemetry Product resource performance, and CAISO’s DAM will have access to the bids below \$500/MWh for the Attestation Product and Energy Product resources. In addition, CAISO’s Day Ahead Market Enhancements Straw

¹⁰ CAISO Proposal at 10.

proposal contemplates that CAISO will be able to address the uncertainty between the DAM and RTM by procuring imbalance reserves, taking into consideration both internal and external resources. The measure would likely reduce the efficiency of the EIM by tying up transmission that otherwise could have been used to dispatch more efficient resources. Finally, as explained more fully below, particularly at CAISO's northern interties, there is significant concentration of firm transmission, leading to the potential for significant cost increases to California consumers. For these reasons, CalCCA supports retention of current CAISO rules, which impose a RTM MOO on imports only when they receive a DAM award.

D. Offer Requirements

CalCCA agrees with MSCG that more should be required of resources that are not pseudo-tied or dynamically scheduled. These resources should be required to provide added security by (1) providing telemetry or other operational data to the CAISO to confirm availability or (2) when no physical verification is provided, adhering to an offer cap of \$500/MWh that would apply in the DAM and the RTM (when the resource clears the DAM).¹¹

CalCCA's proposal is summarized in Appendix A.

III. THE STAFF PROPOSAL IS UNNECESSARILY RESTRICTIVE AND WILL INCREASE REGULATORY UNCERTAINTY, REDUCE SUPPLY AVAILABILITY, AND INCREASE CUSTOMER COSTS

The exercise of deterring speculative import RA supply requires consideration of several important issues, including the interaction of any requirements with not only reliability, but supply availability, market power, regulatory uncertainty, stranded costs and impacts on the wholesale market. The solutions presented in this Track range on a spectrum, with differing impacts in these areas. The Staff proposal is on the conservative edge of the spectrum and risks

¹¹ MSCG Proposal at 7.

supply reduction, market impacts and stranded costs. While CalCCA shares the Staff’s aim of ensuring the availability of import energy when needed to support California reliability, there are less draconian approaches than those proposed by Staff.

The Staff Proposal will unnecessarily limit supply availability from import resources. First, it defines “resource specific” to include only pseudo-tied and dynamically scheduled resource specific resources,¹² unnecessarily excluding specific groups of resources whose availability could be demonstrated through other means. Second, while the Staff Proposal appears to permit reliance on resources that are not pseudo-tied or dynamically scheduled, in reality it does not. The proposal limits imports to energy contracts – a significant change in the current framework – and then essentially requires self-scheduling during availability assessment hours (“AAH”).¹³ These restrictions will naturally limit the pool of suppliers willing to provide import RA contracts to support California reliability.

The Staff Proposal also carries the potential to materially impact the wholesale market regulated by the FERC. By mandating the price bid by non-resource-specific import energy (*i.e.*, self-scheduling for all import RA), thus restricting the way energy is sold at wholesale and bid in CAISO markets, the Staff Proposal infringes on FERC jurisdiction. Where a state law or program is so “tethered” to, or directly impacts participation in, the wholesale market, FERC would be justified in challenging the state’s action.¹⁴

The Staff Proposal may also create unintended consequences by hampering the state’s environmental policy goals. In particular, the self-scheduling requirement may increase the

¹² Staff Proposal at 4.

¹³ Staff Proposal at 5.

¹⁴ *Hughes v. Talen Energy Mktg., LLC*. 136 S. Ct. 1288 (2016).

evening ramp flexibility needs, as resources that are not contracted for RA rush to come offline so they do not conform to the market signal associated with self-scheduling during AAH. The market then may see a sharp decrease of resource supply immediately before AAH, which would require maintaining a large number of fast-ramping flexible resources, which are likely to be natural gas resources. This could potentially increase GHG emissions and create an unintended environmental consequence that is inconsistent with the goal of decarbonizing the grid.

For these reasons and recognizing that no other stakeholder proposes going to the Staff's extreme, the Commission should reject the Staff Proposal as unnecessarily and unreasonably restrictive.

IV. UNDER ANY PROPOSAL, THE COMMISSION SHOULD GRANDFATHER EXISTING CONTRACTS TO ADDRESS THE RECENT REGULATORY UNCERTAINTY SURROUNDING IMPORTS AND MITIGATE THE RISK OF STRANDED CONTRACT VALUE

Under any proposal the Commission adopts, it must take into account the impact of uncertainty in its regulations over the past year, both surrounding D.19-10-021 and Track 1 of this proceeding. Ongoing and material changes in rules risk stranding contracts executed by LSEs and, consequently, increasing customer costs. As the Commission did in modifying RA rules in 2004 and 2005, it should adopt transition rules to mitigate the risk of any such impacts.

The Commission considered a similar problem in 2005 and came to the conclusion that it must provide for notice, a phase out, and grandfathering to effectuate new RA rules. The Commission began to consider issues surrounding the use of Liquidated Damages ("LD") contracts for in-state resources in the RA program, but "did not definitively state an intention ... to terminate their usage."¹⁵ It thus concluded that "D.04-10-035 did not constitute fair notice to

¹⁵ D.05-10-042 at 63.

LSEs that, as of October 29, 2004, they should only enter into new LD contracts with the understanding that they were at risk that those contracts would not qualify” for RA compliance.¹⁶ The Commission clearly and accurately concluded: “[n]or did any other event prior to today constitute such notice.”¹⁷

Recognizing the need for notice, the Commission carefully constructed a phase-out process to protect existing contracts. The Commission:

- ✓ Grandfathered LD contracts executed before the date of D.05-10-042;¹⁸
- ✓ Established a sunset date, making clear that “LD contracts will not count for purposes of RA showings after December 31, 2008.”¹⁹
- ✓ Established step-down maximum limits for LD contracts, as a percentage of an LSE’s RA portfolio, during the phase-out years 2006-2008.²⁰

Finally, and most succinctly, the Commission stated:

[B]y phasing out the ability of LD contracts to count in LSEs’ RAR showings, we are not abrogating those contracts as has been claimed. The contracts will remain in effect until they expire on their own terms.²¹

The Commission should provide equally for existing contracts in the context of a final decision in this Track.

CalCCA proposes that the Commission minimize impacts by providing for implementation of any new rules no earlier than the 2021 compliance year. Any other approach risks impairing contracts already executed and submitted for showings. This is particularly true of the Staff proposal, which relies on Maximum Cumulative Capability (MCC) bucket

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 64.

²⁰ *Id.* at 65.

²¹ *Id.* at 66.

definitions;²² since MCC buckets are currently undergoing redefinition in Track 2, implementing the Staff Proposal for 2020 would exacerbate uncertainty and increase stranded costs.

In addition, the Commission should mitigate the risk of stranding any multi-year forward system RA contracts. The Commission has encouraged forward contracting, and some LSEs have responded to that encouragement with multi-year contracts, anticipating an eventual move to a multi-year construct like local RA. To the extent an LSE has executed a multi-year system RA contract, the Commission should not “reward” the LSE’s efforts by effectively creating stranded costs. CalCCA thus proposes that the Commission grandfather any multi-year system RA contract executed on or after October 17, 2019 (the issuance date for D.19-10-021) and allow it to count for compliance until it expires under its own terms.

V. CONCLUSION

For all of the foregoing reasons, CalCCA requests adoption of the Blended Proposal.

Respectfully submitted,

CALIFORNIA COMMUNITY CHOICE
ASSOCIATION



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²² Staff Proposal at 5.

APPENDIX A

Source	Firm Transmission	CAISO Tariff Changes
<i>Dynamic Products:</i> Capacity from dynamically scheduled or pseudo tie resources	Firm from source to CAISO	<ul style="list-style-type: none"> • Attest that supply is committed surplus that will not otherwise be sold • Require verification through the existing RTM MOO to ensure the resource specific supply remains available to the CAISO markets through the operational timeframe; and • Clarify that only source specific supply can qualify as resource adequacy import capacity.
<i>Telemetry Products:</i> Capacity from specific source (including aggregation of physical resources, or balancing authority surplus) with telemetry provided to CAISO	<p>The contract and attestation must confirm that the product “cannot be curtailed for economic reasons, and either (a) is delivered on transmission that cannot be curtailed in operating hours for economic reasons or bumped by higher priority transmission or (b) specifies firm delivery point (i.e., is not sellers choice).”</p> <p>Penalties could apply for failure to delivery using firm transmission</p>	<ul style="list-style-type: none"> • Attest that supply is committed surplus that will not otherwise be sold • Require verification through telemetry to ensure the resource specific supply remains available to the CAISO markets through the operational timeframe; and • Clarify that only source specific supply can qualify as resource adequacy import capacity.
<i>Attestation Products:</i> Capacity from specific source (including aggregation of physical resources, or balancing authority surplus) subject to attestation	Same as Telemetry Product firm transmission requirements	<ul style="list-style-type: none"> • Attest that supply is committed surplus that will not otherwise be sold • Clarify that only source specific supply can qualify as resource adequacy import capacity • Impose \$500/MWh offer cap in DAM and in RTM when awarded in DAM
<i>Energy Products:</i> Energy contract imported by LSE from specific source (including aggregation of physical resources, or balancing authority surplus)	Same as Telemetry Product firm transmission requirements	<ul style="list-style-type: none"> • Same as Attestation Product